

Executive Summary – Enforcement Matter – Case No. 40621

City of Bailey

RN101609055

Docket No. 2010-1826-MWD-E

Order Type:

Findings Agreed Order

Findings Order Justification:

People or environmental receptors have been exposed to pollutants which exceed levels that are protective.

Media:

MWD

Small Business:

No

Location(s) Where Violation(s) Occurred:

City of Bailey, located approximately 900 feet west of Farm-to-Market ("FM") Road 816 and 3,000 feet southwest of the intersection of FM Road 816 and State Highway 11, Fannin County

Type of Operation:

Wastewater treatment plant

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: August 10, 2012

Comments Received: No

Penalty Information

Total Penalty Assessed: \$73,650

Amount Deferred for Expedited Settlement: \$0

Amount Deferred for Financial Inability to Pay: \$73,650

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Average

Site/RN - Average

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Executive Summary – Enforcement Matter – Case No. 40621

City of Bailey

RN101609055

Docket No. 2010-1826-MWD-E

Investigation Information

Complaint Date(s): N/A

Date(s) of Investigation: September 8, 2010

Date(s) of NOE(s): September 10, 2010

Violation Information

1. Failed to install a staff gauge on the final 90 degree V-notch weir [30 TEX. ADMIN. CODE § 319.11(d) and Texas Pollutant Discharge Elimination System (“TPDES”) Permit No. WQ0013584001, Operational Requirements No. 5].
2. Failed to comply with the permitted effluent limitations for biochemical oxygen demand and fecal coliform [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), TPDES Permit No. WQ0013584001, Effluent Limitations and Monitoring Requirements No. 1].
3. Failed to submit the discharge monitoring reports (“DMRs”) by the 20th day of the following month [30 TEX. ADMIN. CODE §§ 305.125(1) and (17) and 319.7(d) and TPDES Permit No. WQ0013584001, Monitoring and Reporting Requirements No. 1].
4. Failed to submit the annual sludge report for the monitoring period ending July 31, 2009 [30 TEX. ADMIN. CODE § 305.125(1) and 305.125(17) and TPDES Permit No. WQ0013584001, Sludge Provisions].
5. Failed to report effluent violations which deviate from the permitted effluent limitation by more than 40% in writing to the Regional Office and the Enforcement Division within five working days of becoming aware of the noncompliance [30 TEX. ADMIN. CODE § 305.125(1) and 9(A) and TPDES Permit No. WQ0013584001, Monitoring and Reporting Requirements Nos. 7.a and 7.c.].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require Respondent to:

a. Within 30 days:

- i. Update the Facility’s operational guidance and conduct employee training to ensure that self-reporting requirements are properly accomplished and that timely noncompliance notices are sent, including the timely submittal of signed and certified monthly DMRs, noncompliance notifications, and annual sludge reports;

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City of Bailey

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- ii. Submit the DMRs for June 30, 2008, July 31, 2008, September 30, 2008, October 31, 2008, November 30, 2008, December 31, 2008, January 31, 2009, February 28, 2009, March 31, 2009, April 30, 2009, May 31, 2009, June 30, 2009, and July 31, 2009; and
- iii. Install a staff gauge on the final 90 degree V-notch weir.
- b. Within 45 days, submit written certification of compliance with Ordering Provision a.
- c. Within 365 days, submit written certification demonstrating compliance with permitted effluent limits.

Litigation Information

Date Petition(s) Filed: N/A

Date Answer(s) Filed: N/A

SOAH Referral Date: N/A

Hearing Date(s): N/A

Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Jennifer Graves, Enforcement Division, Enforcement Team 1, MC R-15, (956) 430-6023; Debra Barber, Enforcement Division, MC 219, (512) 239-0412

TCEQ SEP Coordinator: N/A

Respondent: Kenneth Burks, Mayor Pro-Tem, City of Bailey, P.O. Box 159, Bailey, Texas 75413

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	15-Oct-2010	Screening	26-Oct-2010	EPA Due	
	PCW	29-Nov-2010				

RESPONDENT/FACILITY INFORMATION

Respondent	City of Bailey		
Reg. Ent. Ref. No.	RN101609055		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	40621	No. of Violations	6
Docket No.	2010-1826-MWD-E	Order Type	Findings
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Jennifer Graves
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$58,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	57.0% Enhancement	Subtotals 2, 3, & 7	\$33,345
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Notes: Enhancement for nine months of self-reported effluent violations, two NOV's with same/similar violations, and one NOV with dissimilar violations.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts \$7,434
Approx. Cost of Compliance \$52,300
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$91,845
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OTHER FACTORS AS JUSTICE MAY REQUIRE	-19.8%	Adjustment	-\$18,195
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommend reduction so that the self-reported violations and the reporting violations do not overly impact the penalty.

Final Penalty Amount	\$73,650
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$73,650
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$73,650
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Screening Date 26-Oct-2010

Docket No. 2010-1826-MWD-E

PCW

Respondent City of Bailey

Policy Revision 2 (September 2002)

Case ID No. 40621

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101609055

Media [Statute] Water Quality

Enf. Coordinator Jennifer Graves

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	11	55%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 57%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for nine months of self-reported effluent violations, two NOVs with same/similar violations, and one NOV with dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 57%

Screening Date 26-Oct-2010

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PCW

Respondent City of Bailey

Policy Revision 2 (September 2002)

Case ID No. 40621

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101609055

Media [Statute] Water Quality

Enf. Coordinator Jennifer Graves

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 319.11(d) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0013584001, Operational Requirements No. 5

Violation Description

Failed to install a staff gauge on the final 90 degree V-notch weir.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Major	Harm Moderate	Minor
Actual			
Potential			x

Percent 5%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix
Notes

Human health or the environment will or could be exposed to the release of insignificant amounts of pollutants which would not exceed levels that are protective of human health or the environment.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty \$500

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$31

Violation Final Penalty Total \$629

This violation Final Assessed Penalty (adjusted for limits) \$629

Economic Benefit Worksheet

Respondent City of Bailey
Case ID No. 40621
Req. Ent. Reference No. RN101609055
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment	\$500	8-Sep-2010	31-Jul-2011	0.89	\$1	\$30	\$31
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to install a staff gauge on the final 90 degree V-notch weir. Date required is the investigation date. Final date is the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$31

Screening Date 26-Oct-2010

Docket No. 2010-1826-MWD-E

PCW

Respondent City of Bailey

Policy Revision 2 (September 2002)

Case ID No. 40621

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101609055

Media [Statute] Water Quality

Enf. Coordinator Jennifer Graves

Violation Number 2

Rule Cite(s)

Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), TPDES Permit No. WQ0013584001, Effluent Limitations and Monitoring Requirements No. 1

Violation Description

Failed to comply with the permitted effluent limitations, as documented during a record review on September 8, 2010, and shown in the attached violation table.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

122 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty \$1,000

One quarterly event is recommended for the quarter containing the month of April 2010.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$6,415

Violation Final Penalty Total \$1,259

This violation Final Assessed Penalty (adjusted for limits) \$1,259

Economic Benefit Worksheet

Respondent City of Bailey
Case ID No. 40621
Req. Ent. Reference No. RN101609055
Media Water Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$50,000	30-Sep-2009	31-Jul-2011	1.83	\$305	\$6,110	\$6,415
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to conduct an evaluation of the wastewater treatment system to determine the cause of noncompliance. Date required is the initial month of noncompliance. Final date is the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$50,000

TOTAL

\$6,415

Screening Date 26-Oct-2010

Docket No. 2010-1826-MWD-E

PCW

Respondent City of Bailey

Policy Revision 2 (September 2002)

Case ID No. 40621

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101609055

Media [Statute] Water Quality

Enf. Coordinator Jennifer Graves

Violation Number 3

Rule Cite(s)

Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), TPDES Permit No. WQ0013584001, Effluent Limitations and Monitoring Requirements No. 1

Violation Description

Failed to comply with the permitted effluent limitations, as documented during a record review on September 8, 2010, and shown in the attached violation table.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual	x		
Potential			

Percent 50%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants which exceed levels that are protective of human health or environmental receptors.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 7

181 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$35,000

Seven monthly events are recommended for the months of September, October, November, and December of 2009 and January, February, and March of 2010.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$35,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$44,064

This violation Final Assessed Penalty (adjusted for limits) \$44,064

Economic Benefit Worksheet

Respondent City of Bailey

Case ID No. 40621

Reg. Ent. Reference No. RN101609055

Media Water Quality

Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

See Economic Benefit for Violation No. 2.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

TOTAL

\$0

Screening Date 26-Oct-2010

Docket No. 2010-1826-MWD-E

PCW

Respondent City of Bailey

Policy Revision 2 (September 2002)

Case ID No. 40621

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101609055

Media [Statute] Water Quality

Enf. Coordinator Jennifer Graves

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code §§ 305.125(1) and (17) and 319.7(d) and TPDES Permit No. WQ0013584001, Monitoring and Reporting Requirements No. 1

Violation Description

Failed to submit the discharge monitoring reports ("DMRs") for the monitoring periods ending June 30, 2008, July 31, 2008, September 30, 2008, October 31, 2008, November 30, 2008, December 31, 2008, January 31, 2009, February 28, 2009, March 31, 2009, April 30, 2009, May 31, 2009, June 30, 2009, and July 31, 2009, by the 20th day of the following month, as documented during a record review conducted on September 8, 2010.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the permit requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 13

395 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$13,000

Thirteen monthly events are recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$13,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$114

Violation Final Penalty Total \$16,367

This violation Final Assessed Penalty (adjusted for limits) \$16,367

Economic Benefit Worksheet

Respondent City of Bailey
Case ID No. 40621
Req. Ent. Reference No. RN101609055
Media Water Quality
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$250	8-Sep-2010	31-Jul-2011	0.89	\$1	\$15	\$16
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$650	20-Jul-2008	31-Jul-2011	3.03	\$98	n/a	\$98

Notes for DELAYED costs

The estimated cost to update operational guidance and conduct employee training to ensure that all monitoring records are properly maintained and all reporting requirements are met. Date required is the investigation date. Final date is the expected date of compliance. The estimated cost to prepare and submit the DMRs (\$50 x 13 DMRs = \$650). Date required is the date the first DMR was due. Final date is the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$900

TOTAL

\$114

Screening Date 26-Oct-2010

Docket No. 2010-1826-MWD-E

PCW

Respondent City of Bailey

Policy Revision 2 (September 2002)

Case ID No. 40621

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101609055

Media [Statute] Water Quality

Enf. Coordinator Jennifer Graves

Violation Number 5

Rule Cite(s)

30 Tex. Admin. Code § 305.125(1) and 305.125(17) and TPDES Permit No. WQ0013584001, Sludge Provisions

Violation Description

Failed to submit the annual sludge report for the monitoring period ending July 31, 2009, as documented during a record review conducted on September 8, 2010.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

	Harm		
Release	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor
		x		

Percent 10%

Matrix Notes

100% of the permit requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

372

Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$13

Violation Final Penalty Total \$1,259

This violation Final Assessed Penalty (adjusted for limits) \$1,259

Economic Benefit Worksheet

Respondent City of Bailey
Case ID No. 40621
Req. Ent. Reference No. RN101609055
Media Water Quality
Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$100	1-Sep-2009	31-Jul-2011	1.91	\$1	\$13	\$13
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost of preparing and submitting the annual sludge report. Date required is the date the report was due. Final date is the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$13

Screening Date 26-Oct-2010

Docket No. 2010-1826-MWD-E

PCW

Respondent City of Bailey

Policy Revision 2 (September 2002)

Case ID No. 40621

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101609055

Media [Statute] Water Quality

Enf. Coordinator Jennifer Graves

Violation Number 6

Rule Cite(s)

30 Tex. Admin. Code § 305.125(1) and 9(A), and TPDES Permit No. WQ0013584001, Monitoring and Reporting Requirements Nos. 7.a and 7.c

Violation Description

Failed to report effluent violations which deviate from the permitted effluent limitation by more than 40% in writing to the Regional Office and the Enforcement Division within five working days of becoming aware of the noncompliance. Specifically, the Respondent did not submit written notification for the fecal coliform bacteria violations for the months of September, October, November and December 2009 and January, February, March, and April 2010.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the permit requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 8

386 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$8,000

Eight single events are recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$8,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$430

Violation Final Penalty Total \$10,072

This violation Final Assessed Penalty (adjusted for limits) \$10,072

Economic Benefit Worksheet

Respondent City of Bailey
Case ID No. 40621
Req. Ent. Reference No. RN101609055
Media Water Quality
Violation No. 6

Percent Interest	Years of Depreciation
5.0	15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description No commas or \$

Delayed Costs

Equipment			0.00	\$0	\$0	\$0
Buildings			0.00	\$0	\$0	\$0
Other (as needed)			0.00	\$0	\$0	\$0
Engineering/construction			0.00	\$0	\$0	\$0
Land			0.00	\$0	n/a	\$0
Record Keeping System			0.00	\$0	n/a	\$0
Training/Sampling			0.00	\$0	n/a	\$0
Remediation/Disposal			0.00	\$0	n/a	\$0
Permit Costs			0.00	\$0	n/a	\$0
Other (as needed)			0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$400	5-Oct-2009	5-May-2010	1.50	\$30	\$400	\$430
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to submit the required non-compliance notifications (\$50 x 8 Noncompliance Notifications = \$400). Date required is the date the first noncompliance notification was due. Final date is the date the last noncompliance notification was due.

Approx. Cost of Compliance \$400

TOTAL \$430

EFFLUENT VIOLATION TABLE			
City of Bailey			
TPDES Permit No. WQ0013584001			
Docket No. 2010-1826-MWD-E			
Month	BOD Daily Avg. Conc.	Fecal Coliform Bacteria Daily Avg.	Fecal Coliform Bacteria Max. Single Grab
	Limit = 30 mg/L	Limit = 200 cfu/100 mL	Limit = 800 cfu/100 mL
September 2009	c	3,925.00	7,600
October 2009	c	14,825.00	40,000
November 2009	36.00	2,441.00	6,600
December 2009	38.00	1,022.50	3,000
January 2010	38.25	10,800.00	18,000
February 2010	35.00	12,450.00	23,000
March 2010	c	9,908.00	35,000
April 2010	c	250.00	c
BOD = biochemical oxygen demand Avg. = Average Conc. = concentration Max. = Maximum mg/L = milligrams per liter cfu/100 mL = colonies per 100 milliliters c = compliant			

Compliance History Report

Customer/Respondent/Owner-Operator:	CN600637540	City of Bailey	Classification: AVERAGE	Rating: 1.12
Regulated Entity:	RN101609055	CITY OF BAILEY	Classification: AVERAGE	Site Rating: 1.12
ID Number(s):	WASTEWATER	PERMIT		WQ0013584001
	WASTEWATER	EPA ID		TX0107719
	WASTEWATER LICENSING	LICENSE		WQ0013584001
Location:	APPROX 900 FT W OF FM 816 AND 3000 FT SW OF THE INTX OF FM 816 AND ST HWY 11 IN FANNIN CO, TX			
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	October 18, 2010			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	October 18, 2005 to October 18, 2010			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Jennifer Graves	Phone:	(956) 430-6023	

Site Compliance History Components

- | | |
|--|---------------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership/operator of the site during the compliance period? | No |
| 3. If yes, who is the current owner/operator? | N/A |
| 4. If yes, who was/were the prior owner(s)/operator(s)? | N/A |
| 5. When did the change(s) in owner or operator occur? | N/A |
| 6. Rating Date: 9/1/2010 | Repeat Violator: NO |

Components (Multimedia) for the Site:

- | | |
|----|--|
| A. | Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government. |
| | N/A |
| B. | Any criminal convictions of the state of Texas and the federal government. |
| | N/A |
| C. | Chronic excessive emissions events. |
| | N/A |
| D. | The approval dates of investigations. (CCEDS Inv. Track. No.) |

- | | | |
|----|------------|----------|
| 1 | 01/05/2006 | (451248) |
| 2 | 12/29/2005 | (490529) |
| 3 | 12/29/2005 | (490530) |
| 4 | 12/29/2005 | (490531) |
| 5 | 12/29/2005 | (490532) |
| 6 | 12/29/2005 | (490533) |
| 7 | 12/29/2005 | (490534) |
| 8 | 11/27/2006 | (513221) |
| 9 | 09/22/2006 | (527649) |
| 10 | 09/21/2006 | (527650) |
| 11 | 09/21/2006 | (527651) |
| 12 | 09/21/2006 | (527652) |
| 13 | 09/21/2006 | (527653) |
| 14 | 09/21/2006 | (527654) |
| 15 | 09/25/2006 | (527655) |
| 16 | 09/21/2006 | (527656) |
| 17 | 09/22/2006 | (527657) |

18	01/26/2007	(537183)
19	12/04/2007	(629167)
20	12/04/2007	(629168)
21	12/04/2007	(629169)
22	12/04/2007	(629170)
23	12/04/2007	(629171)
24	12/04/2007	(629172)
25	12/04/2007	(629173)
26	12/04/2007	(629174)
27	12/04/2007	(629175)
28	12/04/2007	(629176)
29	12/04/2007	(629177)
30	12/04/2007	(629178)
31	03/05/2008	(637915)
32	01/11/2008	(676626)
33	06/30/2008	(695160)
34	06/30/2008	(695161)
35	06/30/2008	(695162)
36	06/30/2008	(695163)
37	06/30/2008	(695164)
38	06/30/2008	(695165)
39	12/05/2008	(706732)
40	06/30/2008	(716665)
41	12/04/2007	(716666)
42	12/04/2007	(716667)
43	12/04/2007	(716668)
44	02/16/2010	(789382)
45	04/06/2010	(797916)
46	04/19/2010	(817640)
47	04/19/2010	(817641)
48	04/19/2010	(817642)
49	04/19/2010	(817643)
50	04/19/2010	(817644)
51	04/19/2010	(817645)
52	06/09/2010	(826072)
53	04/19/2010	(835422)
54	04/19/2010	(835423)
55	06/16/2010	(835424)
56	06/16/2010	(847660)
57	09/10/2010	(860170)
58	08/04/2010	(868651)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	11/30/2005	(490534)	CN600637540
Self Report?	YES		Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	11/27/2006	(513221)	CN600637540
Self Report?	NO		Classification: Minor
Citation:	30 TAC Chapter 317 317.7(e)		
Description:	Failure to provide a lockable gate at all access points.		
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(11)(B) 30 TAC Chapter 305, SubChapter F 305.125(11)(C)		
Description:	Failure to submit the annual sludge report.		
Self Report?	NO		Classification: Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to comply with the effluent permit limits.		

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to submit Discharge Monitoring Reports in a timely manner.

Date: 12/05/2008 (706732) CN600637540
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
30 TAC Chapter 317 317.4(b)(2)
Description: Failure to maintain the grit/scum chamber and clean adequately.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 319, SubChapter A 319.4
Description: Failure to collect and analyze samples for Ammonia Nitrogen as stated in the permit issued on 01/31/2007.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 319, SubChapter A 319.7(a)
Description: Operator Filed measurement log book for pH and DO were not available for review.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to prevent seepage through the seal at the bottom of the V-notch weir.
This issue was addressed during the last investigation on 09/21/2006.

Date: 09/30/2009 (817642) CN600637540
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 10/31/2009 (817643) CN600637540
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 11/30/2009 (817644) CN600637540
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 12/31/2009 (817645) CN600637540
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 01/31/2010 (817640) CN600637540
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 02/16/2010 (789382) CN600637540
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
30 TAC Chapter 317 317.4(b)(2)
Description: Failure to maintain the grit/scum chamber and clean adequately.

Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 319, SubChapter A 319.4		
Description:	Failure to collect and analyze samples for Ammonia Nitrogen as stated in the permit issued on 01/31/2007.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 319, SubChapter A 319.7(a)		
Description:	Operator Filed measurement log book for pH and DO were not available for review.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to prevent seepage through the seal at the bottom of the V-notch weir. This issue was addressed during the last investigation on 09/21/2006.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 319, SubChapter A 319.7(c) WQ13584-001 PERMIT		
Description:	Complete failure to sample, compile, and submit discharge monitoring reports on a monthly basis.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)(B) 30 TAC Chapter 305, SubChapter F 305.125(1)(C) WQ13584-001 PERMIT		
Description:	Complete failure to submit annual sludge reports.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) WQ13584-001 PERMIT		
Description:	Failure to comply with the pH effluent permit limit of 9.0 S.U.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 319, SubChapter A 319.11(d) WQ13584-001 PERMIT		
Description:	Failure to measure flow and no staff gauge available to accurately measure effluent flow.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) 30 TAC Chapter 319, SubChapter A 319.4 30 TAC Chapter 319, SubChapter A 319.5(b) 30 TAC Chapter 319, SubChapter A 319.7(c) WQ13584-001 PERMIT		
Description:	Failure to comply with self-reported effluent permit limits and failure to submit complete data on DMRs.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to submit noncompliance notifications for exceeding the fecal coliform bacteria limits by greater than 40% of the permit limit.		
Date:	02/28/2010 (835422)	CN600637540	
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	03/31/2010 (835423)	CN600637540	
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		

Date: 04/30/2010 (835424)

CN600637540

Self Report? YES

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)

Description: Failure to meet the limit for one or more permit parameter

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF BAILEY
RN101609055**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2010-1826-MWD-E

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Bailey ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that they have certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Respondent owns and operates a wastewater treatment plant located approximately 900 feet west of Farm-to-Market Road 816 and 3,000 feet southwest of the intersection of Farm-to-Market Road 816 and State Highway 11 in Fannin County, Texas (the "Facility").

2. The Respondent has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. During a record review on August 8, 2010, TCEQ staff documented that the Respondent failed to install a staff gauge on the final 90 degree V-notch weir.
4. During a record review on August 8, 2010, TCEQ staff documented the following from the self-reported monthly discharge monitoring reports ("DMR"):

EFFLUENT VIOLATION TABLE			
Month	BOD Daily Avg. Conc.	Fecal Coliform Bacteria Daily Avg.	Fecal Coliform Bacteria Max. Single Grab
	Limit = 30 mg/L	Limit = 200 cfu/100 mL	Limit = 800 cfu/100 mL
September 2009	c	3,925.00	7,600
October 2009	c	14,825.00	40,000
November 2009	36.00	2,441.00	6,600
December 2009	38.00	1,022.50	3,000
January 2010	38.25	10,800.00	18,000
February 2010	35.00	12,450.00	23,000
March 2010	c	9,908.00	35,000
April 2010	c	250.00	c
BOD = biochemical oxygen demand mg/L = milligrams per Liter Avg. = Average cfu/100 mL = colonies per 100 milliliters Conc. = concentration c = compliant Max. = Maximum			

5. During a record review on August 8, 2010, TCEQ staff documented that the Respondent did not submit the DMRs for the monitoring periods ending June 30, 2008, July 31, 2008, September 30, 2008, October 31, 2008, November 30, 2008, December 31, 2008, January 31, 2009, February 28, 2009, March 31, 2009, April 30, 2009, May 31, 2009, June 30, 2009, and July 31, 2009.
6. During a record review on August 8, 2010, TCEQ staff documented that the Respondent did not submit the annual sludge report for the monitoring period ending July 31, 2009 by September 1, 2009.

7. During a record review on August 8, 2010, TCEQ staff documented that the Respondent did not report effluent violations which deviate from the permitted effluent limitation by more than 40% in writing to the Regional Office and the Enforcement Division within five working days of becoming aware of the noncompliance. Specifically, the Respondent did not submit written notification for the fecal coliform bacteria violations for the months of September, October, November and December 2009 and January, February, March, and April 2010.
8. The Respondent received notice of the violations on September 13, 2010.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the Respondent failed to install a staff gauge on the final 90 degree V-notch weir, in violation of 30 TEX. ADMIN. CODE § 319.11(d) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0013584001, Operational Requirements No. 5.
3. As evidenced by Findings of Fact No. 4, the Respondent failed to comply with the permitted effluent limitations, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), TPDES Permit No. WQ0013584001, Effluent Limitations and Monitoring Requirements No. 1.
4. As evidenced by Findings of Fact No. 5, the Respondent failed to submit the DMRs by the 20th day of the following month, in violation of 30 TEX. ADMIN. CODE §§ 305.125(1) and (17) and 319.7(d) and TPDES Permit No. WQ0013584001, Monitoring and Reporting Requirements No. 1.
5. As evidenced by Findings of Fact No. 6, the Respondent failed to submit the annual sludge report for the monitoring period ending July 31, 2009, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and 305.125(17) and TPDES Permit No. WQ0013584001, Sludge Provisions.
6. As evidenced by Findings of Fact No. 7, the Respondent failed to report effluent violations which deviate from the permitted effluent limitation by more than 40% in writing to the Regional Office and the Enforcement Division within five working days of becoming aware of the noncompliance, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and 9(A) and TPDES Permit No. WQ0013584001, Monitoring and Reporting Requirements Nos. 7.a and 7.c.
7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for

violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.

8. An administrative penalty in the amount of Seventy-Three Thousand Six Hundred Fifty Dollars (\$73,650) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Financial Assurance Section of the Commission's Financial Administration Division reviewed financial documentation submitted by the Respondent and determined that the Respondent is unable to pay all of the administrative penalty. Therefore, Seventy-Three Thousand Six Hundred Fifty Dollars (\$73,650) of the penalty is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount of Seventy-Three Thousand Six Hundred Fifty Dollars (\$73,650) as set forth in Section II, Paragraph 8 above, for violations of TCEQ rules and state statutes. The Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Bailey, Docket No. 2010-1826-MWD-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order:
 - i. Update the Facility's operational guidance and conduct employee training to ensure that self-reporting requirements are properly accomplished and that timely noncompliance notices are sent, including the timely submittal of signed and certified monthly DMRs, noncompliance

notifications, and annual sludge reports, in accordance with TPDES Permit No. WQ0013584001;

- ii. Submit the DMRs for June 30, 2008, July 31, 2008, September 30, 2008, October 31, 2008, November 30, 2008, December 31, 2008, January 31, 2009, February 28, 2009, March 31, 2009, April 30, 2009, May 31, 2009, June 30, 2009, and July 31, 2009, in accordance with TPDES Permit No. WQ0013584001, Monitoring and Reporting Requirements; and
- iii. Install a staff gauge on the final 90 degree V-notch weir, in accordance with 30 TEX. ADMIN. CODE § 319.11(d).
- b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision 2.a, in accordance with Ordering Provision No. 2.c; and
- c. Within 365 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0013584001, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations. The certification shall include detailed supporting documentation including receipts, and/or other records to demonstrate compliance, be notarized by a State of Texas Notary Public and include the following certification language:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
7. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
8. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
9. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or

otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Pam Sauer
For the Executive Director

9/4/12
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of the City of Bailey. I am authorized to agree to the attached Agreed Order on behalf of the City of Bailey, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, the City of Bailey waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Kenneth Burks
Signature

4-25-12
Date

Kenneth Burks
Name (Printed or typed)
Authorized Representative of
City of Bailey

Mayor Pro Tem
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section III, Paragraph 1 of this Agreed Order.